

STATE OF NORTH CAROLINA BEFORE THE PROPERTY TAX COMMISSION
COUNTY OF WAKE SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW

12 PTC 0319
12 PTC 0501
14 PTC 0217

IN THE MATTER OF:
APPEAL OF:

**Cleveland Mall/HSCM LLC
and Shelby Mall LLC**
from the decisions of the Cleveland
County Board of Equalization and
Review concerning the valuations
of certain real property for tax
years 2012 and 2014.

ORDER

These Matters came on for hearing before the North Carolina Property Tax Commission (hereinafter "Commission"), sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, at its regularly scheduled session on Wednesday, January 14, 2015 to consider Cleveland County's Motion for Summary Judgment concerning the appeals¹ filed by Cleveland Mall/HSCM LLC and Shelby Mall LLC ("Appellants") challenging the property tax assessments of the properties subject to these appeals.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission Members David Smith, Jack C. Morgan III and Linda O. Shaw participating.

Matthew W. Matson, Esquire appeared at the hearing on behalf of the Appellants. Attorneys Charles C. Meeker and Katherine E. Ross appeared at the hearing on behalf of Cleveland County.

The issue considered by the Commission is stated as follows:

1. Did Cleveland County show that there is no genuine issue as to any material fact in these appeals that would entitle the County to judgment as a matter of law?

At the hearing before the Commission, Cleveland County, through counsel, argued that the Commission should grant the County's Motion for Summary Judgment in these appeals when there was no genuine issue as to any material fact concerning Appellants' challenge to the County Board's decisions concerning the valuations of certain property for tax years 2012 and 2014. Counsel for the Appellants argued at the hearing that the Commission should deny the Motion for Summary Judgment since the facts are disputed as to the valuations of the subject parcels.

¹ Cleveland County's Motion for Summary Judgment concerns all parcels that are the subject of three appeals with one exception. The exception is Parcel Number 58346, which is the site of a newly constructed movie theatre complex.

At the hearing, the Commission voted unanimously to deny Cleveland County's Motion for Summary Judgment because Cleveland County did not show that summary judgment in favor of the County was appropriate concerning Appellants' challenge to the County Board's decisions concerning the valuations of certain property for tax years 2012 and 2014.

APPLICABLE LAW

Rule 56 of the Rules of Civil Procedure provides that summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. Even though the Rules of Civil Procedure do not apply to proceedings before the Property Tax Commission,² our Supreme Court has ruled that the Commission did properly grant summary judgment in favor of the movant when there was no genuine issue as to any material fact.³

FINDINGS OF FACT

Based on the documents and information submitted, the arguments of counsel, and all matters of record, the Commission makes the following Findings of Fact:

1. Shelby Mall, LLC and affiliated companies ("Appellants or "Taxpayers") appealed the values of certain parcels associated with the Shelby Mall for tax year 2008.

2. Prior to the hearing of said appeals, Cleveland County and Taxpayer entered into an order entitled Consent Order Regarding Consolidation and Scope of Appeals.⁴ Paragraphs 2 and 3 of the Consent Order provide:

2. The properties subject to the Consolidated Appeal shall be those parcels assigned by Cleveland County as Parcel Numbers 55784; 55785; 55786; 70767; 70771; 70772; 70773; 70774; 70775; 70776; 70777; and 70779 (the "Subject Property").

3. The true value of the Subject Property as determined by the Consolidated Appeal shall be utilized by Cleveland County to determine the *ad valorem* taxes owed by the respective owner of the Subject Property for tax year 2008 and going forward until the next county-wide revaluation by Cleveland County, subject only to changes in value recognized under North Carolina General Statute § 105-287.

² See 17 N.C.A.C. 11 .0209.

³ See *In re Ocean Isle Palms, LLC* 366 N.C. 351, 749 S.E.2d 439 (2013).

⁴ See Exhibit A attached to Cleveland County's Motion for Summary Judgment.

3. By Final Decision entered on November 30, 2012, the Property Tax Commission set the true value of the subject parcels for tax year 2008. In addition, this Final Decision provided the following of pages 1-2:

The properties subject to the Consolidated Appeal were Parcels Numbers 55784; 55785; 55786; 70767; 70771; 70772; 70773; 70774; 70775; 70776; 70777; and 70779 (the "Subject Property"). The parties further agreed in the Consent Order that the true value of the Subject Property as determined by the Consolidated Appeal shall be utilized by Cleveland County to determine the *ad valorem* taxes owed by the respective owner of the Subject Property for tax year 2008 and going forward until the next county-wide revaluation by Cleveland County, subject only to changes in value recognized under North Carolina General Statute § 105-287.

4. At the hearing, the Commission considered Cleveland County's Motion for Summary Judgment and the documents attached thereto and the argument by Cleveland County's attorney directing the Commission to grant the Motion for Summary Judgment.

5. At the hearing, the Commission also considered the argument of Appellant's attorney that summary judgment was not appropriate when there is a genuine issue as to material facts concerning changes in values of the subject parcels recognized under North Carolina General Statute § 105-287.

6. When there are changes to values recognized under North Carolina General Statute § 105-287, summary judgment would not be appropriate concerning the parcels brought forward by these appeals since there is a genuine issue as to a material fact.

Based on the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

1. Summary Judgment is a method of disposing of litigation when there is no genuine issue of material fact and the undisputed facts establish that a party is entitled to judgment as a matter of law.

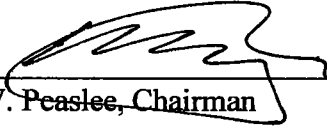
2. There is a genuine issue of material facts concerning the values of the subject parcels recognized under North Carolina General Statute § 105-287.

3. Summary Judgment in favor of Cleveland County is not appropriate in these appeals when there is a genuine issue of material facts as to the values of the subject parcels recognized under North Carolina General Statute § 105-287 for the years at issue.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Commission denies Cleveland County's Motion for Summary Judgment concerning the subject appeals.

NORTH CAROLINA PROPERTY TAX COMMISSION



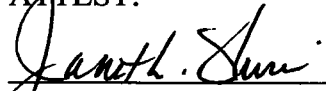


William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Members Smith, Morgan and Shaw concur.

ENTERED: 4-21-2015

ATTEST:



Janet L. Shires, Esquire
Commission Secretary